

ORDINANCE NO. 2013-22

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, ESTABLISHING A PENALTY AMNESTY PROGRAM TO FORGIVE BUSINESSES THAT PAY CERTAIN DELINQUENT ASSESSMENTS FOR THE CORONA DEL MAR BUSINESS IMPROVEMENT DISTRICT FROM LIABILITY FOR PENALTIES

WHEREAS, on July 14, 1997, the City Council of the City of Newport Beach ("City Council") adopted Ordinance No. 97-24, establishing the Corona del Mar Business Improvement District ("BID") pursuant to the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code Section 36500 *et seq.*;

WHEREAS, on July 13, 1998 and August 23, 1999, the City Council adopted Ordinance No. 98-15 and Ordinance No. 99-18, respectively, modifying the basis for levying assessments in the BID and the penalty provisions;

WHEREAS, each year since establishment of the BID, the City Council has renewed the BID and confirmed the levy of assessments and penalties;

WHEREAS, on June 11, 2013, the City Council adopted Resolution No. 2013-46, declaring its intention to renew the BID, levy assessments for the fiscal year July 1, 2013 through June 30, 2014, and restating the penalty provisions for delinquent payments;

WHEREAS, the penalty for delinquent BID assessments is equal to that established for delinquent business license taxes, which is twenty-five percent (25%) of the tax due each month for a total penalty amount not to exceed one hundred percent (100%) of the assessment amount due;

WHEREAS, the City Council desires to encourage BID member businesses to pay delinquent BID assessments and bring their accounts up to date by offering a one-time exemption from penalties on delinquent assessments ("BID Penalty Amnesty Program");

WHEREAS, on October 22, 2013, the City Council adopted Resolution No. 2013-71 declaring its intention to establish the BID Penalty Amnesty Program;

WHEREAS, the City Council believes the BID Penalty Amnesty Program will increase voluntary compliance with the BID assessments and increase future BID assessment revenues allowing for more BID activities to benefit BID members; and

WHEREAS, the City Council desires to correct a scrivener's error in Ordinance No. 98-15 relating to the collection of unpaid BID assessments.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council hereby establishes an amnesty program to forgive penalties for past due BID assessments ("BID Penalty Amnesty Program") under the following conditions:

- A. The BID Penalty Amnesty Program shall commence upon the effective date of this ordinance and terminate at the City's close of business on February 28, 2014.
- B. The delinquent assessments qualifying for the BID Penalty Amnesty Program shall be for the Fiscal Years commencing July 1, 1997 and ending June 30, 2014 only ("Amnesty Period").
- C. All penalties assessed upon a delinquent BID assessment pursuant to Ordinance Nos. 97-24, 98-15, 99-18 and related resolutions, shall be forgiven upon application by a business if all delinquent BID assessments for a specific business, if any, are paid in full during the BID Penalty Amnesty Program.

Section 2: The City's Finance Director or his/her designee shall administer the BID Penalty Amnesty Program as follows:

A. Request for BID Penalty Amnesty

In order to participate in the BID Penalty Amnesty Program, a business shall make a Request for BID Penalty Amnesty to the Finance Director or his/her designee in person, by mail, telephone, or on-line, if practicable, on any City business day from the effective date of this ordinance through February 28, 2014, inclusive.

- 1. If the Request for BID Penalty Amnesty is submitted by mail:
 - a. The Request must be postmarked by the United States Postal Service no later than February 28, 2014, to be accepted.
 - b. The required BID Penalty Amnesty Payment, or the initial installment as set forth below, shall be included with the Request.
 - c. Payment shall be made by check, credit card or money order.
- 2. If a Request for BID Penalty Amnesty is submitted in person:
 - a. The Request must be made at the Cashier's Office, located on the First Floor of City Hall in Bay A, 100 Civic Center Drive, Newport Beach or as otherwise directed by the Finance Director or his/her designee, no later than the City's close of business on February 28, 2014, to be accepted.
 - b. The required BID Penalty Amnesty Payment, or the initial installment as set forth below, shall be included with the Request.
 - c. Payment shall be made by cash, check, credit card or money order.
- 3. If a Request for BID Penalty Amnesty is submitted by telephone:
 - a. A business may request BID Penalty Amnesty by telephone by calling the number designated by the Finance Director or his/her designee during normal business hours while the BID Penalty Amnesty Program is in effect, but no later than the City's close of business on February 28, 2014. The business must speak to any City employee designated by the Finance Director or his/her designee, specifically state that the business is requesting the Amnesty and provide payment information.

- b. A credit card authorization for the full payment of required BID Penalty Amnesty Payment shall be given together with the Request.
 - c. Payment by telephone shall be by credit card only.
- 4. If practicable, the Finance Director or his/her designee may, at his or her sole discretion, provide the business with additional options for requesting BID Penalty Amnesty and making BID Penalty Amnesty Payment including, but not limited to, registering and making payments on-line (collectively referred to herein as "alternative payment options"). The Request for an alternative payment option may be made while the BID Penalty Amnesty Program is in effect. The business shall provide whatever information the Finance Director or his/her designee deems necessary for the City to process payment. The Finance Director or his/her designee is authorized to issue instructions regarding means and method of payment.

B. BID Penalty Amnesty Payment

- 1. The required BID Penalty Amnesty Payment is the total amount of unpaid BID Assessment(s) owed by a business pursuant to Ordinance Nos. 97-24, 98-15, 99-18 and related resolutions, not including any penalties or interest.
- 2. Except for telephone Requests for BID Penalty Amnesty, if the required BID Penalty Amnesty Payment is greater than five hundred dollars (\$500.00), the business may, upon written request only, pay on the Installment Payment Plan basis set forth below. If no written request for installment payments is made, the sum due under the BID Penalty Amnesty Program shall be paid in full at the time the Request for BID Penalty Amnesty is made.
- 3. The Installment Payment Plan requires the initial payment, at the time BID Penalty Amnesty is requested, of the greater of five hundred dollars (\$500.00) or the amount equal to one-third (1/3) of the required BID Penalty Amnesty Payment. The remainder of the required BID Penalty Amnesty Payment shall be paid in no more than two (2) monthly installments of the greater of five hundred dollars (\$500.00) or the amount equal to one-third (1/3) of the required original BID Penalty Amnesty Payment.
- 4. Installment payments received shall be applied toward the oldest delinquent assessments.

C. Failure to Pay Installments

1. Failure of a business to fully pay any installment when due shall disqualify the business from receiving the forgiveness of any penalty on past due BID assessments applicable under this ordinance and the total unpaid amount of BID assessment and penalties shall become immediately due and payable. "Failure of the business to fully pay any installment when due" means a failure of the business to tender payment for the entire amount owing by the applicable due date, or, if tender has been made, a failure of the City to received full value for the tender by the due date because of a dishonored check, rejected credit card submittal or other reason.
2. In the event of a business's failure to fully pay any installment when due, penalties shall be calculated under the provisions of Ordinance Nos. 97-24, 98-15, 99-18 and related resolutions.

- D. No refund or credit shall be granted for any amount of penalty paid prior to the time a business makes a Request for BID Penalty Amnesty pursuant to this ordinance.
- E. The Finance Director or his/her designee shall publicize the BID Penalty Amnesty Program, issue forms and instructions, and take other actions necessary to implement this ordinance.

Section 3: Penalty for Delinquent Payment. Section 6 of Ordinance No. 98-15 is amended in its entirety to read as follows: The penalty for delinquent payments shall be equal to that established for delinquent business license taxes pursuant to Chapter 5.04 of the Municipal Code, requiring that a penalty amount of twenty-five percent (25%) shall be added on the last day of each month after the due date thereof, provided that the amount of such penalty to be added shall in no event exceed one hundred percent (100%) of the assessment amount due.

Section 4: Except as expressly modified herein, all other provisions, terms, and requirements set forth in Ordinance Nos. 97-24, 98-15 and 99-18 shall remain unchanged and shall be in full force and effect.

Section 5: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 6: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

Section 7: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 12th day of November, 2013, and was adopted on the 26th day of November, 2013, by the following vote to wit:

AYES, COUNCIL MEMBERS _____

NOES, COUNCIL MEMBERS _____

ABSENT COUNCIL MEMBERS _____

Keith D. Curry, Mayor

ATTEST:

Leilani I. Brown, City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney